IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1552 OF 2007

Dr. Annasaheb Chougule Urban
Co-Op. Bank Ltd. ..Petitioner
Vs.
Jayasingh Anandrao Patil and anr. ..Respondents

Mr. S.S. Tambekar for petitioner.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 22, 2007.

P.C.:

1. Heard Mr. Tambekar the learned counsel for the petitioner-bank which had instituted Criminal Case No. 98 of 2002 for the offences punishable under Section 420 of IPC and under Section 138 of Negotiable Instruments Act, 1881 against the present respondent no.1. However, by his order dated 27/10/2004 the learned Chief Judicial Magistrate was pleased to discharge the accused from the offence punishable under Section 420 of IPC and on the other hand he held that there was prima facie case to frame charge under Section 138 of the Negotiable Instruments Act, 1881 as

the cheque issued by the accused was dishonoured. The learned Ad-hoc Additional Sessions Judge at Kolhapur while allowing Criminal Revision Application No.291 of 2005 has set aside the order dated 27/10/2004 passed by the learned Chief Judicial Magistrate and hence this petition.

2. The record indicates that in a dispute filed before the Co-operative Court, a decree of recovery of Rs.3,81,295/- was passed against the accused and, therefore, in execution of the same, he issued a cheque for the said amount, drawn in favour of the bank. The learned Chief Judicial Magistrate specifically noted that the cheque that was dishonoured was not drawn by the petitioner but the cheque drawn in favour of the bank was issued from a third person’s account who had nothing to do with the decree of recovery of Rs.3,81,295/-. The learned Ad-hoc Additional Sessions Judge, therefore, rightly held that the accused could not be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 as he had not issued the cheque from his account and an innocent third party could not

be added as an additional accused so as to continue the case filed under Section 138 of the Negotiable Instruments Act, 1881. The view taken by the learned Chief Judicial Magistrate was contrary to the provisions of Section 138 of the Negotiable Instruments Act, 1881 and the learned Ad-hoc Addl. Sessions Judge rightly stepped in correct the said illegality.

3. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)